



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

September 23, 2008

CERTIFIED RECEIPT RETURN
7004 2510 0004 1824 9283

Darrell Boepple
Black Gold Organic Fertilizer, Inc.
3802 47th Street
Lubbock, Texas 79413

Subject: Re-Assessment for Cessation Order Number MC-2008-25-01, Black Gold Organic Fertilizer, Rhea Rae Mine, S/019/0064, Grand County, Utah

Dear Mr. Boepple:

On September 4, 2008, at 8:00 am, The Division had scheduled an informal conference to hear evidence for the 'Fact of Violation' and the 'Proposed Assessment' for the referenced cessation order. Tom Munson (Inspector) and Lynn Kunzler (Assessment Officer) were present. No one from Black Gold Organic Fertilizer, Inc., or the public were present. Pertinent information was presented by Tom Munson and Lynn Kunzler.

As per the evidence presented, Cessation Order MC-2008-25-01 is **upheld**. The proposed penalty of \$2,200 was re-assessed (see attached worksheet). The re-assessed civil penalty for this cessation order is \$1,430.00, and is now due and payable within 30 days of receipt of the re-assessment. The Division acknowledges receipt of this amount, which will close this issue. Enclosed please find your original check of \$2,200 which you sent before the penalty was re-assessed.

You may appeal this decision formally to the Board of Oil, Gas, and Mining, pursuant to R647-7-107, which states:

R647-7-107. Requests for Formal Hearing.

- 1. A permittee or operator charged with a violation may contest the proposed penalty or the fact of the violation by submitting: (a) a petition to the Board; and (b) an amount equal to the proposed penalty (or, if a conference has been held, the reassessed or affirmed penalty) to the Division (to be held in escrow as provided in R647-7- 107.2) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.*
- 2. The Division will transfer all funds submitted under R647-7-107.1 to an escrow account pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R647-7- 108.2 or R647-7-108.3.*
- 3. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of R641, rules of practice and procedure before the Board.*



Page 2
Darrell Boepple
S/019/0064
September 23, 2008

If you wish to appeal this matter to the board, please submit your petition and funds for the re-assessed civil penalty of \$1,430 (to be held in escrow as per R647-7-107.2) to:

Julie Carter, Board Secretary
Utah Division of Oil Gas and Mining
1594 West North Temple
Salt Lake City UT 84114

Please don't hesitate to call if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dana Dean', with a long horizontal flourish extending to the right.

Dana Dean, P.E.
Associate Director, Mining

DD:LK:pb
Task ID# 2459

Enclosure: Returned check #1391
Re-Assessment Worksheet
Julie Carter, Board Secretary
Vicki Bailey, Accounting
Vickie Southwick, Exec. Sec.

P:\GROUPS\MINERALS\WP\M019-Grand\S0190064-RheaRae\final\Reassessment-0904200.doc

BLACK GOLD ORGANIC FERTILIZER INC

PH: (806) 795-2167
3802 47TH ST
LUBBOCK, TX 79413

1391

DATE 9/10/08

88-173-1113

PAY
TO THE
ORDER OF

State of Utah, Dix Oil, Star and Mining
Two Hundred Two Hundred Dollars

\$ 2200 ⁰⁰/₁₀₀

DOLLARS



FOR Order # MC-2008-25-01

Donnell H. Roedel

MP

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

RE-ASSESSMENT – Event

September 4, 2008

COMPANY / MINE Black Gold Organic Fertilizer/Rhea Rae Mine PERMIT S/019/0064
NOV / CO # MC-2008-25-01

I. HISTORY (Max. 25 pts.) (R647–7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today's date? **NO**

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647–7-103.2.12)

NOTE: For assignment of points, the following apply:

Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

EVENT VIOLATION (Max 45 pts.)

1. What is the event that the violated standard was designed to prevent?
Environmental degradation and/or public health and safety.
2. What is the probability of the occurrence of the event, which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 15

PROVIDE AN EXPLANATION OF POINTS:

****** Improperly stored hazardous materials were observed by the inspector. Labels had been removed from containers thus preventing anyone from knowing what was actually being stored. Containers were not secured and were visible from a major public highway. Points were assigned mid-point in 'Likely' range.***

3. What is the extent of actual or potential damage? RANGE 0-25
(In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.)

ASSIGN DAMAGE POINTS 13

PROVIDE AN EXPLANATION OF POINTS:

***** While no damage had occurred, the potential for damage is likely. Materials were not stored in a secured area and were visible from public highways. Labels had been removed from containers so anyone coming in contact with the material would not be able to properly inform medical emergency personnel as to what they had been exposed to. Assigned mid point in range.**

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. NO NEGLIGENCE - Was this an inadvertent violation that was unavoidable by the exercise of reasonable care.
B. NEGLIGENCE - was this a failure of a permittee to prevent the occurrence of a violation due to indifference, lack of diligence, or lack of reasonable care,
C. GREATER DEGREE OF FAULT - was economic gain realized by the permittee?

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligent

ASSIGN NEGLIGENCE POINTS 9

PROVIDE AN EXPLANATION OF POINTS:

***** Since operator had removed labels, he had to have been aware of the need to store these materials in a secure area. MSDS sheets have not been provided as requested by the inspector. Points assigned at midpoint of 'Negligent' range.**

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures) Award points in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- A. EASY ABATEMENT - The operator had onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

X	Immediate Compliance	-11 to -20
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	

X Normal Compliance 0
(Operator complied within the abatement period required)

- B. DIFFICULT ABATEMENT - The operator does not have the resources at hand to achieve compliance, or the abatement requires the submission of plans prior to physical activity to achieve compliance?

-
Difficult Abatement Situation

X Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
X Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
X Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

EASY OR DIFFICULT ABATEMENT? EASY ABATEMENT

ASSIGN GOOD FAITH POINTS -4

PROVIDE AN EXPLANATION OF POINTS:

It is assumed the operator had the resources available onsite to properly store and secure the materials. This is therefore considered an 'easy abatement'. The operator received the violation on June 30, 2008 and informed the Division that the violation had been abated on July 16, 2008 (within 17 days of a 30- day abatement period). This is considered a 'rapid compliance'. 4 good faith points were awarded.

V. ASSESSMENT SUMMARY (R647-7-103.3)

Notice of Violation Number MN-2008-41-01

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>28</u>
III.	TOTAL NEGLIGENCE POINTS	<u>9</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-4</u>
	TOTAL ASSESSED POINTS	<u>33</u>
	TOTAL ASSESSED FINE	<u>\$1,430.00</u>

ASSESSMENT OFFICER



Lynn Kunzler